



734 EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

NO PROTEST RECEIVED  
Release copies to District  
Date [REDACTED]  
Surname [REDACTED]

Date: OCT - 5 2001

Contact Person: [REDACTED]

Identification Number: [REDACTED]

Contact Number: [REDACTED]

Employer Identification Number: [REDACTED]

Dear Applicant:

On [REDACTED] you submitted Form 1024, Application for Recognition of Exemption under Section 501(a) of the Internal Revenue Code. You requested consideration under section 501(c)(9) or, in the alternative, under section 501(c)(5). In a letter dated [REDACTED], we denied your application. In a letter dated [REDACTED], we affirmed that denial. You have now submitted Form 1024 requesting recognition of exemption from federal income tax as an organization described in section 501(c)(6). Based on the information submitted, we have concluded that you do not qualify for exemption under section 501(c)(6). The basis for our conclusion is set forth below.

The information submitted indicates that you were formed pursuant to a collective bargaining agreement on [REDACTED] as a trust between the Employers and the Union. The Employers are the owners and/or operators and/or agents and/or terminal operators of all deep sea and coastwise vessels arriving at and/or departing from all Ports in [REDACTED] and the Port of [REDACTED] subscribed for by the [REDACTED] and their respective regular and associate members. The Union is the [REDACTED] of [REDACTED] and its affiliated [REDACTED] of [REDACTED]. The Agreement of Trust provides that you were created to receive contributions by the Employers, and to administer, accumulate, and/or distribute such contributions in accordance with the provisions of the collective bargaining agreement then in effect between the Employer and the Union. The Agreement states that your purpose is to receive Employer cash contributions for periodic cash distributions to the eligible employees for the purposes of providing the employees certain work incentives including receiving supplemental wages.

In your application, you state that your purpose is to provide an incentive to the workers, which will preserve jobs and the means of production, and enhance productivity and promote job stabilization. You state that the benefit is designed to provide a stable, long term workforce in the nature of a career workforce and overcome the transitory and seasonal nature of the workforce and workers. The workforce involved is a daily labor pool consisting of both union

and nonunion members in an open hiring hall. The incentive is additional compensation for work in certain "underutilized" job categories. You receive cash contributions from the Employers of the participating employees each payroll period. Each Employer makes a fixed hourly contribution for each hour worked by employees in the targeted jobs or functions. The contributions are accumulated for distribution in full at the end of each quarter to the qualifying pool of employees, net of any charged administration fees and employment taxes. There is no carryover accumulation of funds or investments. Only those participants who have met the quarterly minimum number of hours qualify to share in the pool. The distribution is allocated to each employee in proportion to, and based solely on, each employee's number of qualifying hours to the total number or such hours worked by all employees.

You state that you are designed to create an incentive to achieve a stabilized, reliable, skilled, drug-free, efficient, workforce. You state that, in essence, you operate as a career retention plan. The incentive is designed for each worker to return to unfinished jobs the next day and continue on so the worker can accumulate 250 hours in the quarter to qualify for the pool. You state that this results in superior productivity and better reliability with a more consistent and continuous workforce and work crews that are available to begin and complete jobs.

You state that in your industry and with your workforce, it would not be possible for any one employer or business to attempt or achieve your purpose. The result may only be achieved by a broad-based effort of an industry-wide trust. You state that a single employer trust could not accomplish the result. You also state that you were not formed or designed for payroll or compensation purposes, but to promote the industry-wide goals, and that you are designed and operated to function as industry-wide job stabilization and career retention programs, not merely to pay supplemental wages. Further, you state that you are not displacing any outside commercial alternative because there is no for-profit business or company that could perform your service or achieve your goals. You state that you are not a long-term savings program or a retirement plan, nor are you functioning as a credit union or commercial bank.

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for a profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Section 511(a) of the Code imposes a tax on the unrelated business taxable income of organizations described in section 501(c).

Section 512(a)(1) of the Code defines the term "unrelated business taxable income" as the gross income derived by any organization from any unrelated trade or business regularly carried on by it, less certain allowable deductions and modifications.

Section 513(a) of the Code defines the term "unrelated trade or business" as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of the function constituting the basis of its exemption.

Section 1.513-1(d)(2) of the regulations provides that trade or business is "related" to exempt purposes, in the relevant sense, only where the conduct of the business activities has causal relationship to the achievement of exempt purposes; and it is "substantially related" only if the causal relationship is a substantial one. The regulation continues that for the conduct of trade or business from which a particular amount of gross income is derived to be substantially related to purposes for which exemption is granted, the production or distribution of the goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those purposes.

Rev. Rul. 66-354, 1966-2 C.B. 207, describes a collective bargaining agreement between an association of manufacturers and a labor union that provides for the establishment of an organization to receive federal and State employment taxes which the manufacturers are required to deduct from the wages of their employees who are members of the union. The organization pays over the amounts so received to the appropriate tax authorities. It was established to insure the efficient discharge of an obligation imposed by law on its creators to pay certain federal and State taxes. The revenue ruling concludes that the organization does not qualify for exemption as an organization described in section 501(c)(6) of the Code, or any other of the subsections of section 501(c), because it does not serve any of the exempt purposes described therein.

Rev. Rul. 68-264, 1968-1 C.B. 264, defines a particular service for the purposes of section 501(c)(6) of the Code as including an activity that serves as a convenience or economy to the members of the organization in the operation of their own businesses.

Rev. Rul. 82-138, 1982-2 C.B. 106, describes a trust created as a result of collective bargaining agreements between individual exempt business leagues and a labor union. The trust regularly disburses contributions to the "industry fund" of each participating business league, allocated in proportion to the amount of contributions received from the employer-members of the participating business leagues. The amounts in the industry funds may be invested, accumulated, or disbursed only for labor relations functions, public relations and legislative activities, promotion of employment, apprenticeship, vocational or training programs, and other programs to improve business conditions of the home building industry within the meaning of section 1.501(c)(6)-1 of the regulations. The revenue ruling concludes that the organization is exempt under section 501(c)(6) of the Code because it is promoting the common

business interests of the industry and disbursing funds to the member business leagues for business league purposes.

In Steamship Trade Association of Baltimore, Inc. v. Commissioner, 81 T.C. 303 (1983), the Court held that the organization's administration of vacation pay and guaranteed annual income accounts, provided for under a collective bargaining agreement, was unrelated to its exempt activities under section 501(c)(6) of the Code. The Court reasoned that the performance of these services benefited the members, and not the industry as a whole, by relieving them of the burden of procuring those services individually from a commercial enterprise. Therefore, the fees received by the organization from its members for administering these accounts were subject to tax under section 511(a) as income from unrelated trade or business.

It is clear that your primary activity is the provision of additional compensation to employees for work they have engaged in on behalf of your members, the Employers. It is immaterial whether the payments are considered to be insuring a stabilized, reliable, skilled, drug-free, efficient, workforce, or whether they are considered to be providing a career retention plan. In the same manner as the organization discussed in Rev. Rul. 66-354, supra, this activity does not serve any of the exempt purposes described in section 501(c)(6) of the Code. It is similar to the guaranteed annual income accounts determined to be unrelated trade or business as described in Steamship Trade Association of Baltimore, Inc., supra. You are not similar to the organization described in Rev. Rul. 82-138, supra, because that organization's disbursements were made only for programs to improve business conditions within the meaning of section 501(c)(6). Your program benefits your members by relieving them of a burden they would otherwise incur, which is considered to be a particular service as described in Rev. Rul. 68-264, supra.

Accordingly, for the above reasons, you do not qualify for exemption as an organization described in section 501(c)(6) of the Code. Our letters dated [REDACTED], and [REDACTED], denying your application for exemption under sections 501(c)(9) and 501(c)(5), remain in effect. You must file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference. If you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201.

[REDACTED]

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service  
T:EO:RA:T:2 - CCH  
1111 Constitution Ave, N.W.  
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

(signed) Terrell M. Berkovsky

Terrell M. Berkovsky  
Manager, Exempt Organizations  
Technical Group 2

✓ cc: [REDACTED]

[REDACTED]

[REDACTED]